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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,303	04/19/2004	Nobukazu Onishi	Q81147	9815

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EXAMINER	
TRAN, SUSAN T	

ART UNIT	PAPER NUMBER
1615	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/826,303	**Applicant(s)** ONISHI ET AL.	
	Examiner Susan T. Tran	**Art Unit** 1615	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *15,17-19,21 and 22*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see detailed action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

SUSAN TRAN
PRIMARY EXAMINER

Art Unit: 1615

DETAILED ACTION

Applicant argues that Matsuhashi teaches away from using a saccharide that is not covalently bonded to an allergen. Specifically, Matsuhashi discloses a mixture (rather than a conjugate) of an allergen and a saccharide as a control sample in Tables 1-3, showing inferior results, compared to the use of allergen-saccharide conjugates. Further, the use of glucomannan with an average particle diameter of 100 μm or less, exhibits unexpected superior results versus the particle size disclosed in the prior art, which is not appreciated by Matsuhashi. In this regard, Applicants submit herewith an article by Nobukazu Onishi et al., entitled, "A New Immunomodulatory Function of Low-Viscous Konjac Glucomannan with a Small Particle Size: Its Oral Intake Suppresses Spontaneously Occurring Dermatitis in NC/Nga Mice" (herein after "Onishi et al."). Applicants refer the Examiner to Onishi et al. at page 260, left column, under "Results" and Table 1 in the right column. Therein, the physiochemical properties, including the average particle size of low-viscous konjac powders are disclosed. The particle sizes of the different varieties of konjac, as disclosed in Table 1, ranged from 105-315 μm. When each of the particle sizes of konjac were tested, however, it was "found that oral intake of low-viscous GM (S-P) with only small particle size restrained the progression of dermatitis, itching behavior, and plasma IgE evaluation in NC/Nga mice (fig. 1 a, b, 3a, ...)." See Onishi et al. at page 263, left column, first paragraph under "Discussion". Further, it is disclosed that, "These results implied that the suppressive effect of konjac GM on the development of AD-like dermatitis should depend upon the particle size rather than viscosity." See Onishi et al. at page 263, left column, first paragraph under

"Discussion". Thus, the particle size, as recited in the claims of the present invention, results in unexpected superior results, not disclosed or suggested by either of the prior art references.

However, in response to applicant's arguments against Matsuhashi individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the present case, Matsuhashi is cited in view of McGinley for the teaching of glucomannan particles having average particle size of 0.1-100 μm (column 2, lines 1-65). Thus, the use of glucomannan having particle size of 0.1-100 μm is known in pharmaceutical art. Therefore, it would have been obvious to one of ordinary skill in the art to, by routine experimentation determine a suitable particle size with the expectation of obtaining a formulation useful in pharmaceutical art.

Applicant argues that neither Matsuhashi nor McGinley teach that the glucomannan utilized therein has a dietary fiber content of 95% or more, as recited in Claims 15 and 19.

However, the burden is shifted to applicant to provide evident that the glucomannan taught by the cited references do not have the fiber content of 95% or more. This is because the cited references teach glucomannan obtained by a similar method disclosed by the present invention, namely, purified glucomannan (see for example McGinley at column 2, lines 64). Furthermore, Matsuhashi teaches the use of glucomannan for the same purpose, namely, glucomannan useful for the treatment of

allergy, such as cedar pollen allergy (column 1, lines 54 through column 2, lines 1-24). Matsuhashi further teaches saccharide helps prevent an anaphylaxis and facilitates the preparation of a more effective preparation for the treatment of allergy (column 2, lines 20-24).

Applicant requests acknowledgement of the receipt of the certified copy of the foreign priority document.

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 10/212,071, filed on 11/12/02.

S. TRAN
AU 1615